

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CINDY M.,

Claimant,

vs.

EASTERN LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH Nos. 2013050009  
2013050113

**DECISION**

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter in Whittier, California, on June 17, 2013.

Cindy M. (Claimant) was represented by her mother, Maria G.<sup>1</sup> Claimant was present throughout the hearing.

Lily Ortega, Supervisor, represented Eastern Los Angeles Regional Center (ELARC or Service Agency or regional center.)

The matter was submitted on June 17, 2013.

**ISSUES**

1. Whether Service Agency may reduce Claimant's respite hours from 30 hours per month to 12 hours per month.
2. Whether Service Agency may discontinue funding for Claimant's personal assistance services which are being used for social recreation purposes.

**EVIDENCE RELIED UPON**

Documentary: Service Agency's exhibits 1-8; Claimant's exhibits A-G.

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<sup>1</sup> Initials have been used to protect Claimant's privacy.

Testimonial: Catherine Martinez, ELARC Service Coordinator; Claimant's mother; Claimant.

## FACTUAL FINDINGS

1. Claimant is a 17-year-old female who qualifies for regional center services based on an autism diagnosis.

2. In two separate Notices of Proposed Action, ELARC informed Claimant of two changes in services. First, ELARC intended to reduce funding for respite hours from 30 hours per month to 12 hours per month, based on Welfare and Institutions Code section 4686.5. Second, ELARC denied funding for personal assistance services, based on Welfare and Institutions Code section 4648.5.

3. Claimant's mother timely filed these appeals.

4. Claimant's most recent Individual Program Plan, dated March 14, 2013, notes that Claimant is fully ambulatory and requires no special aids or equipment. She is very well behaved and well rounded. She attends school full-time, and is mainstreamed for half the school day. The IPP also notes that Claimant uses her personal assistant to participate in social recreation activities. Specifically, the personal assistant takes Claimant "to the library, the movies, and even shopping."

5. Claimant receives 183 hours per month of In-Home Support Services (IHSS). She also receives \$722 per month of Supplemental Security Income (SSI).

6. Catherine Martinez (Martinez), Claimant's Service Coordinator, testified at the hearing. She explained that Claimant is highly involved in extra curricular activities, and essentially, Claimant's parents have been using her personal assistant as transportation to some of these activities and others which constitute social recreation. For example, Claimant's personal assistant takes her to the nail salon, to the mall for recreational shopping, to the movies, and to her dance classes. Martinez noted that Claimant is highly functional and intelligent, and is on track to receive a diploma from her high school. She is completely independent, has no behavior issues, and is generally healthy. Claimant's mother does not work outside the home, although she is actively involved in volunteer work. Martinez noted that under ELARC guidelines, Claimant would only qualify for 8 hours per month of respite, but in the spirit of being generous, ELARC increased the amount to 12 hours per month.

7. Claimant's mother testified at the hearing. She acknowledges that Claimant's behaviors are not excessive. She does not think it is her responsibility to provide Claimant with access to social recreation, and stated that if the Service Agency does not fund for personal assistance, Claimant's social recreation activities will cease. Claimant's mother gives a lot of services to the community and has other responsibilities, and thinks that it is not her responsibility to provide Claimant with access to the community. Claimant's mother

thinks that the personal assistance services provide Claimant with safety awareness and help her integrate into the community.

8. Claimant testified at the hearing. She enjoys the company of her personal assistant. She described some of the activities that the personal assistant helps her with, such as checking out books at the library, exercising at the gym, and shopping at the mall.

## LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeals, as set forth in Factual Findings 1-8, and Legal Conclusions 2-6.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500, et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[t]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Services provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

5. A regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subd. (a), 4647, subd. (a), 4646.5, subd. (a)(4)).

6. Welfare and Institutions Code section 4686.5 states:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.

(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

7. Welfare and Institutions Code section 4648.5 states in pertinent part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [sic] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

[§] . . . [§]

(2) Social recreation activities, except for those activities vendored as community-based day programs.

[§] . . . [§]

(4) Nonmedical therapies, including, but not limited to, specialized recreation.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

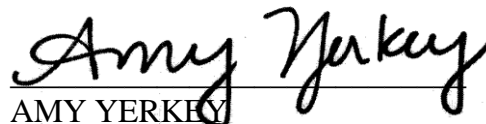
8. Given the foregoing, Claimant's appeals must be denied. Welfare and Institutions Code section 4648.5 has suspended the Service Agency's authority to purchase

social recreation activities and non-medical therapies. The evidence established that Claimant's use of personal assistance was for social recreation activities. To qualify for the statutory exemption, Claimant's use of personal assistance must serve as a primary or critical means for ameliorating the physical, cognitive or psychosocial effects of Claimant's developmental disabilities, or they must be necessary to enable Claimant to remain in her home. The evidence showed that Claimant participates in many extracurricular activities to address her needs; shopping and going to the nail salon with her personal assistant are not primary or critical. Accordingly, an exemption, pursuant to Welfare and Institutions Code section 4648.5, subdivision (c), is not warranted. With regard to the respite issue, Welfare and Institutions Code section 4686.5 has restricted the number of respite hours that a regional center may provide per month. Again, Claimant does not meet the exception requirements, in that Claimant's needs are not so intense that additional respite is necessary for her to remain in the family home. In addition, Claimant has generic resources such as SSI and IHSS to assist in securing services.

### ORDER

Claimant's appeal is denied. The Service Agency may uphold its denial of Claimant's request for funding of personal assistance, and it may also reduce funding of respite hours from 30 hours per month to 12 hours per month.

Dated: June 28, 2013

A handwritten signature in black ink that reads "Amy Yerkey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

AMY YERKEY  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.